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Law Enforcement Personnel and Lawmaking

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Police Brutality

I. Police officers have the difficult job of **reconciling two deeply held but conflicting values**

A. **Our desire to be safe and secure in our persons and homes**

B. **Our strong belief in the right of the individual to be free from governmental coercion and excessive control**

How the law enforcement officers and departments handle this conflict has a direct bearing on how the public sees them.

As a culture, we expect our police officers to be able to balance these goals.

When they veer off too far in one direction or another, we criticize them.

At the extreme, too heavy a focus on order and safety may border on police brutality.

II. A report issued by **Human Rights Watch** in 1998 reveals that these acts are committed by a small group of officers.

A. Human Rights Watch **faults** not only these officers, but the departments that it claims protect these officers.

B. **Ultimately the courts have to decide** whether the police department has tipped the balance too far in the direction of public order and must balance safety against individual rights.

Beginning in the 1960's, courts, in particular, the U.S. Supreme Court, issued decisions that seem to oscillate between these two goals.

C. **Escobedo v. Illinois** (1964)

The Supreme Court held that Mr Escobedo's right to counsel, safe guarded by the 6th Amendment, was violated when he refused access to a lawyer, even though he had not been formally indicted yet.

Then the pendulum swung the other way, as the Court issued a decision that squarely favored order and public safety and gave the police much more discretion in fighting crime.

D. Chavez v. Martinez (2003)

In this case, Mr. Martinez was repeatedly questioned after being shot by police officers. He was blinded and paralyzed as the result of the shooting and police officers continued to question him even as he was being treated

Here, the Court concluded that the police's need for information about his encounter with police outweighed any rights Martinez may have had.

III. By the mid-to late 1990's, police brutality was very much in the news, as the media reported on a number of very graphic and visible instances of brutality.

Rodney King Rodney King was caught by the Los Angeles police after a high-speed chase on March 3, 1991. The officers pulled him out of the car and beat him brutally, while amateur cameraman George Holliday caught it all on videotape. The four L.A.P.D. officers involved were indicted on charges of assault with a deadly weapon and excessive use of force by a police officer. However, after a three-month trial, a predominantly white jury acquitted the officers, inflaming citizens and sparking the violent 1992 Los Angeles riots.

More recently, the death of a **Harlem woman** was ruled a homicide following the woman's fatal heart attack after police mistakenly raided her apartment, threw a concussion grenade, and handcuffed her.

IV. Media exposure and widespread criticism have convinced many police departments to Review, and in some cases Revise, their procedures for using deadly force.

A. Civilian Complaint Review Board of New York was given much broader powers to investigate and prosecute cases involving police brutality.

Because...

A 2001 report found that there were widespread delays in the investigation and prosecution of civilian complaints. Up until then the Review Board was NOT independent of the police department.

- B. Given sufficient resources to prosecute cases against police officers, the Review Board should function more efficiently; but up until this point, deep **budget cuts** have made it difficult for the board to do its work.

Police Discretion

- I. Like courts, legislatures, and executives, law enforcement agents are central actors in **the American legal system**.
- A. Law enforcement agents **stand on the “front lines,”** implementing the criminal codes created by other branches.
- B. This might seem reactive because law enforcement personnel are charged with putting into place **laws created by other governmental** actors; they exercise a significant degree of discretion in the implementation of these laws.

C. **The decision makers:**

Police officers may not be the ones who are creating law, but they are the ones who make the decisions about how the criminal code will be used, who will be investigated, and who will be charged with violations of this code.

II. **The need for police discretion**

Most police work focuses, not on investigation and arrest, but on maintaining order and preventing crime.

A. **Police work is situational**

Officers make decisions about how to react to some threat or breach of the peace based on the situation.

An officer may respond differently to the same action depending on the context.

B. **Every situation is different**

The National Criminal Justice research Service, an arm of the U.S. Department of Justice, describes such a scenario, noting that an officer may physically restrain an intoxicated person who is harassing a pregnant woman and her child on a busy street.

But...

Take a less aggressive approach in dealing with the same drunk who is harassing a young man on a quiet street.

Law enforcement officers argue that the exercise of discretion is essential to policing and that it is not always appropriate or effective to use the same approach in different situations

It appears that police discretion is expanding.

- C. **Atwater v. Lago Vista**: a 2001 Supreme Court case that allowed police to exercise their discretion in deciding to arrest a woman who had not seat-belted her children into her car.

In this case, the Court was asked to determine whether a Lago Vista police officer had exceeded his authority.

The effect of this case has been to uphold the use of police discretion in situations involving arrest and in the use of warrantless searches – two situations where police discretion has become especially important.

Americans do not have the right to be free from all searches – only those that are unreasonable or of places in which they have a reasonable expectation of privacy.

Example: according to the U.S. Supreme Court, individuals do not have a reasonable expectation of privacy in their garbage, and so law enforcement agents may search people's garbage without a warrant and may use any incriminating evidence against them.

- D. **The war on terror** has considerably broadened the exercise of discretion by law enforcement agents. This expansion is apparent in a number of areas, among them, immigration and naturalization and search and surveillance.

The FBI and the CIA were given the power to conduct searches without having to meet the more stringent probable cause requirement if they could demonstrate that they expected the search to yield information that would be relevant to a criminal investigation. These agencies are also allowed to use roving wiretaps and to monitor internet communications.

III. The downside of discretion

A. Most important / Most problematic

Discretion is the most important lawmaking power that law enforcement personnel are given, and it is the exercise of this discretion that may be most problematic.

B. Domestic violence

For many years, police departments declined to investigate or make any arrests in calls involving domestic violence.

These cases were seen as involving private matters, and most police officers who were called to the scene were very slow to arrive and didn't engage in a full investigation when they did arrive.

It was only after women had been injured or disabled by their batterers brought a series of lawsuits that departments began to take these calls seriously and train officers to deal with domestic abuses cases.

Perhaps the most famous of these cases involved a 1984 suit brought against the police department in Torrington, Connecticut, by a woman who was permanently disabled by her batterer.

Discretion may be essential to effective law enforcement, but this does not mean that officers are free to do whatever they want.

They must make decisions about how to approach difficult circumstances, but their actions cannot be arbitrary, random, or at worst, discriminatory.

C. Sometimes, there is a very thin line between discretion and discrimination.

D. For many years, law enforcement agents have employed profiles to apprehend criminals.

E. Terry stops, after the 1968 U.S. Supreme Court decision in Terry v Ohio, typically allows officers to use their discretion in deciding to detain and search people who meet a certain profile.

F. Racial profiling

The problem with these profiles is that they are not racially neutral and tend to target African Americans, even where members of this group have not engaged in any criminal activity.

The use of racial profiling grew out of these proxies, and in the 1990's, the practices of the New Jersey State Police, New York City Police Department, and Los Angeles Police Department came under fire as it was revealed these police departments had been using race alone as a proxy for criminal activity.

G. The challenge of making changes

Many municipal and state law enforcement agencies vowed to change their practices.

Many of these agencies agreed to keep records on routine traffic stops as a way of routing out racial profiling.

The U.S. Justice Department's Civil Rights Division, responsible for safeguarding individual rights, vowed to be at the forefront of efforts to eradicate profiling.

However, the war on terror has also affected this agency's activities, as it has struggled with the new law enforcement practice of targeting Arabs, Arab Americans, and Muslims.

In June 2003, the Justice Department issued new guidelines on racial profiling that vowed to eliminate profiling but allowed law enforcement officers to use the practice where it was necessary to safeguard national security.